

The Honorable Richard A. Jones

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff

v.

ROMAN SELEZNEV,

Defendant.

NO. CR11-0070RAJ

**DECLARATION OF
SETH WILKINSON IN SUPPORT OF
STIPULATED SCHEDULING ORDER**

I, Seth Wilkinson, declare as follows:

1. I am an Assistant United States Attorney and am one of the attorneys responsible for the prosecution of this case.

2. On March 16, 2011, a grand jury in this district returned a 29-count Superseding Indictment charging Roman Seleznev with various crimes involving the theft and sale of credit card data. Specifically, the Superseding Indictment alleges that defendant hacked into retail point of sale computer systems, including the systems of businesses in this district, and installed malicious software (“malware”) that collected customer credit card data from the retail computer systems. The Superseding Indictment further alleges that the malware caused the computer systems to send the credit card data to servers controlled by the defendant, which the defendant then offered for sale on websites he operated, including websites with the names “bulba.cc” and “track2.name.”

DECLARATION OF SETH WILKINSON
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1 3. Federal law enforcement officers took Seleznev into custody in the
2 Maldives on July 5, 2014. Seleznev was transported to the District of Guam the same
3 day. After removal proceedings in Guam, Seleznev was transported to this district, where
4 he had his initial appearance on August 8, 2014. Defendant was ordered detained after a
5 detention hearing on August 15, 2014.

6 4. Before defendant made his initial appearance in Seattle, the government
7 became aware of a potential conflict of interest involving Fox Rothschild, the law firm
8 that represented Seleznev at that time. The conflict of interest arose out of Fox
9 Rothschild's representation of ZPizza, one of the victims of the scheme charged in the
10 Superseding Indictment. The government notified Fox Rothschild of the conflict the
11 same day it learned of Fox Rothschild's representation of ZPizza. After being advised of
12 the potential conflict, Fox Rothschild lawyers stated that they intended to continue
13 representing Seleznev. Fox Rothschild lawyers entered notices of appearance on August
14 13, 2014. Later that day, the government filed a Motion for Inquiry informing the Court
15 of the conflict and requesting that the Court hold a hearing on the issue. The Court held a
16 hearing on the conflict on August 31, 2014. On September 26, 2014, the Court held a
17 second hearing, at which it announced its finding that ethical rules prevented Fox
18 Rothschild from continuing to represent Seleznev. The Court ordered Fox Rothschild to
19 withdraw from the representation. The Court also found that the law firm of Garvey
20 Schubert Barer, which Seleznev had retained as local counsel, and which also faced a
21 potential conflict of interest, was not precluded from continuing to represent Seleznev.

22 5. Discovery in this case will be voluminous. The U.S. Attorney's Office for
23 the Western District of Washington expects to produce at least 4 terrabytes of electronic
24 evidence. The discovery primarily consists of: (a) imaged documents such as law
25 enforcement reports, emails, investigation materials, and audits of victim computers; and
26 (b) forensic images of computers, such as images of defendant's laptop, servers used to
27 commit the fraud, email accounts defendant used both to operate the servers used in the
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1 fraud scheme and for personal purposes (such as receiving pictures of his wife and child),
2 and victim computers infected with defendant's malware.

3 6. In addition to the 4 terrabytes of evidence that will be produced by this
4 office, I have been informed that an additional 17 terrabytes of evidence will be produced
5 by the United States Attorney's Office for the District of Nevada in connection with
6 another matter in which defendant is charged, which is captioned *United States v. Roman*
7 *Zolotarev et al*, CR12-004. Because that Indictment also charges defendant with criminal
8 activity involving the theft and sale of credit card data, discovery produced by the United
9 States Attorney's Office for the District of Nevada ("USAO-Nevada") may be material to
10 the defense of these charges. The undersigned understands that defense counsel and
11 USAO-Nevada will coordinate the production of that discovery.

12 7. Litigation of the conflict of interest issue discussed above delayed the
13 exchange of discovery. Because of the pendency of the conflict issue, the government
14 and the defense were unable to negotiate a protective order (which was a precondition to
15 production of discovery) until after the conflict was resolved. On October 3, 2014,
16 following resolution of the conflict issue, the government and then-local counsel Garvey
17 Schubert Barer submitted a Stipulated Protective Order. The Court entered the Protective
18 Order on October 6, 2014.

19 8. At the same time the parties were negotiating the Protective Order, the
20 government asked defense counsel to advise the government as to the format in which the
21 defense would prefer to receive electronic copies of imaged documents. The government
22 also requested that the defense provide the government with a hard drive on which the
23 government could load forensic computer images. Lawyers from Garvey Schubert Barer
24 advised the government that uncertainty existed as to whether Garvey Schubert Barer
25 would continue representing Seleznev, and that the defense was therefore not yet in a
26 position to determine its preferred electronic format for imaged documents.

27 9. On October 14, 2014, the Court granted a defense motion to allow Steven
28 Fogg of Corr Cronin to substitute as replacement counsel for Seleznev and for Garvey

1 Schubert Barer to withdraw. On October 15, 2014, Mr. Fogg advised the government of
2 the defense's preferred electronic format for imaged documents. On October 16, 2014,
3 the defense provided the government with a hard drive to receive the forensic computer
4 images.

5 10. Following notification of the preferred format, the government began
6 processing the imaged documents into the requested format. The government produced
7 the imaged documents on October 21, 2014 and the forensic images on October 23, 2014.

8 11. The government believes that the productions discussed above (including
9 the USAO-Nevada production) will constitute the vast majority of discovery in this case.
10 However, because of the scope of defendant's far-reaching fraud scheme, which spanned
11 the United States and many foreign nations, the government is continuing to investigate
12 whether additional discoverable materials exist. Based on existing information, the
13 government expects that investigation to be complete, and for additional materials
14 obtained in that investigation to be produced, by the end of January 2015. As with any
15 litigation, it is possible that additional material will be discovered in the course of trial
16 preparation. The government will promptly produce any such material as it is
17 discovered.

18 12. On October 8, 2014, the grand jury returned a 40-count Second
19 Superseding Indictment against defendant. The Second Superseding Indictment adds
20 additional charges arising out of additional theft and sale of credit card data by Seleznev
21 after the Superseding Indictment was returned, and up until the time of his arrest. The
22 Second Superseding Indictment alleges that Seleznev operated a website known as
23 2Pac.cc, which trafficked in stolen credit cards, and that Seleznev was involved in the
24 theft of over 2 million credit cards. Defendant was arraigned on the Second Superseding
25 Indictment on October 16, 2014.

26 13. Trial is presently scheduled for November 3, 2014. I discussed scheduling
27 of this matter with Steven Fogg between October 9 and October 20, 2014. Mr. Fogg
28 indicated that, because of the complexity of this case and the volume of discovery, the

1 defense cannot, with the exercise of due diligence, be prepared for trial before May 2015.
2 On October 20, 2014, Victoria Ericksen, the Court's in-court deputy, advised me that the
3 Court is available for trial commencing May 4, 2015.

4 14. Defense counsel and the government believe that the ends of justice served
5 by the granting of a continuance to May 4, 2015 outweigh the best interests of the public
6 and the defendant in a speedy trial. Such period of delay resulting from a continuance
7 granted by this Court in accordance with Title 18, United States Code, Section
8 3161(h)(8)(A) should be excludable for the following reasons:

9 a. The failure to grant such a continuance in this case would be likely
10 to result in a miscarriage of justice;

11 b. It is in the defendant's best interest to be aware of all of the potential
12 charges against him, and the scope of the losses involved in the charges, and to have the
13 opportunity to negotiate settlements on all of those charges;

14 c. The failure to grant such a continuance in this case would deny
15 counsel for the defendant and counsel for the government the reasonable time necessary
16 for effective preparation, taking into account the exercise of due diligence, because of the
17 nature of the prosecution, the existence of a significant amount of complex discovery,
18 novel questions of fact and law, and commitments to other clients;

19 d. Because of ongoing negotiations and other discovery matters it may
20 be unreasonable to expect adequate preparation for pretrial proceedings or for the trial
21 itself within the time limits established by Title 18, United States Code, Section 3161.

22 15. On October 21, 2014, I forwarded this Declaration and the proposed
23 Stipulation and Order to Mr. Fogg for his review. After reviewing these documents, Mr.
24 Fogg advised me that he concurs with the request for the proposed trial schedule for the
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1 reasons set forth in those documents.

2 16. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the
3 foregoing is true and correct.

4 EXECUTED: October 27, 2014.

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7 /s/ Seth Wilkinson

8 SETH WILKINSON

9 Assistant United States Attorney
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